doctrine to find a grossly negligent party solely at fault.[12] But this escape valve, in addition to being inherently unreliable, simply replaces one unfairness with another. That a vessel is primarily negligent does not justify its shouldering all responsibility, nor excuse the slightly negligent vessel from bearing any liability at all. See *Tank Barge Hygrade* v. *The Gatco New Jersey*, 250 F. 2d 485, 488 (CA3). The problem remains where it began—with the divided damages rule:

> "[T]he doctrine that a court should not look too jealously at the navigation of one vessel, when the faults of the other are glaring, is in the nature of a sop to Cerberus. It is no doubt better than nothing; but it is inadequate to reach the heart of the matter, and constitutes a constant temptation to courts to avoid a decision on the merits." *National Bulk Carriers, Inc.* v. *United States*, 183 F. 2d 405, 410 (L. Hand, J., dissenting).

The divided damages rule has been said to be justified by the difficulty of determining comparative degrees of negligence when both parties are concededly guilty of contributing fault. *The Max Morris*, 137 U. S. 1, 12. Although there is some force in this argument, it cannot justify an equal division of damages in every case of collision based on mutual fault. When it is impossible

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[12] See, *e. g.*, *The City of New York*, 147 U. S. 72, 85:

"Where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel. There is some presumption at least adverse to its claim, and any reasonable doubt with regard to the propriety of the conduct of such other vessel should be resolved in its favor."

See also *The Victory and the Plymothian*, 168 U. S. 410; *The Umbria*, 166 U. S. 404; *The Oregon*, 158 U. S. 186; *The Ludvig Holberg*, 157 U. S. 60.

fairly to allocate degrees of fault, the division of damages equally between wrongdoing parties is an equitable solution. But the rule is unnecessarily crude and inequitable in a case like this one where an allocation of disparate proportional fault has been made. Potential problems of proof in some cases hardly require adherence to an archaic and unfair rule in all cases. Every other major maritime nation has evidently been able to apply a rule of comparative negligence without serious problems, see Mole & Wilson, A Study of Comparative Negligence, 17 Corn. L. Q. 333, 346 (1932); *In re Adams' Petition*, 125 F. Supp. 110, 114, aff'd, 237 F. 2d 884, and in our own admiralty law a rule of comparative negligence has long been applied with no untoward difficulties in personal injury actions. See, *e. g.*, *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406, 409. See also Merchant Marine ("Jones") Act, 46 U. S. C. § 688; Death on the High Seas Act, 46 U. S. C. § 766.

The argument has also been made that the divided damages rule promotes out-of-court settlements, because when it becomes apparent that both vessels are at fault, both parties can readily agree to divide the damages—thus avoiding the expense and delay of prolonged litigation and the concomitant burden on the courts. It would be far more difficult, it is argued, for the parties to agree on who was more at fault and to apportion damages accordingly. But the argument is hardly persuasive. For if the fault of the two parties is markedly disproportionate, it is in the interest of the slightly negligent party to litigate the controversy in the hope that the major-minor fault rule may eventually persuade a court to absolve it of all liability. And if, on the other hand, it appears after a realistic assessment of the situation that the fault of both parties is roughly equal, then there is no reason why a rule that apportions damages would be any less likely to induce a settlement than a

rule that always divides damages equally. Experience with comparative negligence in the personal injury area teaches that a rule of fairness in court will produce fair out-of-court settlements.[13] But even if this argument were more persuasive than it is, it could hardly be accepted. For, at bottom, it asks us to continue the operation of an archaic rule because its facile application out of court yields quick, though inequitable, settlements, and relieves the courts of some litigation. Congestion in the courts cannot justify a legal rule that produces unjust results in litigation simply to encourage speedy out-of-court accommodations.

Finally, the respondent suggests that the creation of a new rule of damages in maritime collision cases is a task for Congress and not for this Court.[14] But the judiciary

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[13] The rule of comparative negligence applicable to personal injury actions in our maritime law, see The Jones Act, 46 U. S. C. § 688, Death on the High Seas Act, 46 U. S. C. § 766, does not appear to discourage the negotiation of settlements in such litigation. It has been reported, for example, that of the marine personal injury cases involving a federal question that were terminated in fiscal year 1974, only 9.6% ever reached trial. Annual Report of the Director of the Administrative Office of the United States Courts, Table C4, at 429 (1974).

[14] The respondent also relies on the fact that the Senate has twice failed to ratify the Brussels Convention with its proportional fault rule. It is urged that this inaction indicates "grave doubt" in Congress that rejection of the divided damages rule will further justice. But even if we could find guidance in such "negative legislation," *Moragne* v. *States Marine Lines*, 398 U. S. 375, 405 n. 17, it appears that the Senate took no action with respect to the Convention not because of opposition to a proportional fault rule, but because of the Convention's poor translation and the opposition of cargo interests to the provision which would prevent cargo from recovering in full from the noncarrying vessel by eliminating joint and several liability of vessels for cargo damage. See H. Baer, Admiralty Law in the Supreme Court 414–415 (2d ed. 1969); Staring, Contribution and Division of Damages in Admiralty and Mari-

has traditionally taken the lead in formulating flexible and fair remedies in the law maritime, and "Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law." *Fitzgerald* v. *United States Lines Co.*, 374 U. S. 16, 20. See also *Moragne* v. *States Marine Lines*, 398 U. S. 405 n. 17; *Kermarec* v. *Compagnie Generale Transatlantique*, 358 U. S. 625, 630–632. No statutory or judicial precept precludes a change in the rule of divided damages, and indeed a proportional fault rule would simply bring recovery for property damage in maritime long since established by Congress for personal injury cases. See the Jones Act, 46 U. S. C. § 688.[15]

As the authors of a leading admiralty law treatise have put the matter:

> "[T]here is no reason why the Supreme Court cannot at this late date 'confess error' and adopt the proportional fault doctrine without Congressional action. The resolution to follow the divided damages rule, taken 120 years ago, rested not on overwhelming authority but on judgments of fact and of fairness which may have been tenable then but are hardly so today. No 'vested rights,' in theory or fact, have intervened. The regard for 'settled expectation' which is the heart-reason of . . . *stare decisis* . . . can have no relevance in respect to such a rule; the concept of 'settled expectation' would be reduced to an absurdity were it to be applied to a rule of damages for negligent collision. The abro-

time Cases, 45 Calif. L. Rev. 304, 343 (1957). See also Note, 64 Yale L. J. 878 (1955).

[15] This Court, in other appropriate contexts, has not hesitated to overrule an earlier decision and settle a matter of continuing concern, even though relief might have been obtained by legislation. See *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 n. 1 (Brandeis, J., dissenting) (collecting cases).

> gation of the rule would not, it seems, produce any disharmony with other branches of the maritime law, general or statutory." G. Gilmore & C. Black, The Law of Admiralty 531 (2d ed. 1975) (footnote omitted).[16]

The rule of divided damages in admiralty has continued to prevail in this country by sheer inertia rather than by reason of any intrinsic merit. The reasons that originally led to the Court's adoption of the rule have long since disappeared. The rule has been repeatedly criticized by experienced federal judges who have correctly pointed out that the result it works has too often been precisely the opposite of what the Court sought to achieve in *The Schooner Catharine*—the "just and equitable" allocation of damages. And worldwide experience has taught that that goal can be more nearly realized by a standard that allocates liability for damages according to comparative fault whenever possible.

We hold that when two or more parties have contributed by their fault to cause property damage in a maritime collision or stranding, liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault, and that liability for such damages is to be allocated equally only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault.

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[16] See also Donovan, Mutual Fault-Half Damage Rule—A Critical Analysis, 41 Ins. Coun. J. 395 (1974); Allbritton, Division of Damages in Admiralty—A Rising Tide of Confusion, 2 Journal of Maritime Law and Commerce 322 (1971); Jackson, The Archaic Rule of Dividing Damages in Maritime Collisions, 19 Ala. L. Rev. 263 (1967); Staring, *supra*, 45 Calif. L. Rev., at 304; Mole & Wilson, A Study of Comparative Negligence, 17 Corn. L. Q. 333 (1932); and Huger, The Proportional Damage Rule in Collisions at Sea, 13 Corn. L. Q. 531 (1928).

Accordingly, the judgment before us is vacated and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.